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Supreme Court of the United States.

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JAMES H. McKENNEY,
Clerk.

OCTOBER TERM, 1904.

THE UNITED STATES,
Petitioner,

vs.

THE CORNELL STEAMBOAT CO.,
Respondent.

No. 624. 239.

Brief in Opposition to Application for Writ of Certiorari.

The Respondent respectfully represents to this Court, that no writ of certiorari should be granted here, and presents the following considerations in answer to the Petition of the United States.

FIRST POINT.

The case came before the United States District Court on a demurrer to the Petition. The demurrer admitted the allegations of the petition, and the allegation was therefore admitted that the cargo of sugar in question "had been saved from destruction by fire" by the respondents ing; that "the duties on the sugar had been paid to the Government provisionally and in such wise that if the sugar had been destroyed by said fire the owners of said sugar would have been entitled to claim a repayment to them of the amount of the duties."

These facts being admitted, the United States ought not to be heard to argue against them. And this Court ought not to call up this case in order

to hear the United States argue that the facts are otherwise, which seems to be the substance of the present brief for the United States.

SECOND POINT.

These facts being admitted, the services of the respondent's tug saved to the United States $6,000. There is no equity in the refusal of the United States to pay salvage for that saving. It is not fair for the United States to refuse to pay for that service. The Circuit Court of Appeals has so decided. And this Court ought not to assist the United States in its effort to avoid doing what is fair.

THIRD POINT.

The brief on page 2 states that the case presents several questions of special importance. We deny that those questions as stated are in the case.

(1) This suit does not "arise under the Revenue Laws." It is a suit in Admiralty to recover salvage on an implied contract in accordance with the decision in the case of the Monarch.

(2) There is no question here as to "import duties being subject (in rem) to salvage claims." The question is whether the United States, whose right to righteously hold the $6,000 of duties has been saved to it, ought *ex aequo et bono* to pay a reasonable remuneration for such services.

(3) There is no question here of the applicability of Admiralty Rule 19. The Statute in question, the Tucker Act, gives the District Court jurisdiction over the contract in this case.

(4) This case is not "a hypothetical case." It is a case in which all the facts are admitted.

FOURTH POINT.

The quotation on p. 8 of the brief for the United States, purporting to be a quotation from the decision of the Court in the "respondent's suit against the sugar" is a misquotation. No such language is to be found in the opinion.

But that the loss of the duty by the destruction of the sugar "would have been the loss of the Government" is quite correct. That is the very ground on which it is held to be right for the Government to pay a compensation for saving it from that loss.

It is correct to say that the Government "could not be made a party to the suit" against the sugar, but it is not correct to say that it "had no interest in or relation to the property." It had such an interest in and relation to it, that the destruction of the sugar would have caused a loss of $6,000 to the Government—exactly such an interest as was held by the Admiralty Courts of England in the cases of "The Five Steel Barges" (15 P. D. Rep. 142, and "The Port Victor" (Aspinall's Maritime Law Cases, vol. 9, pp. 163 and 182), to make a claim to compensation, on the saving of the property, a righteous and just claim.

We respectfully request the Court to examine those cases. They will, we are sure, commend themselves to the good sense and sense of justice of this Court.

FIFTH POINT.

The question of the jurisdiction of the Court has been sustained by two Circuit Courts of Appeal, the case of the Monarch, 99 F. R., 570 and the present case. We respectfully request the

Court to carefully look at the opinion of the Court in the case of the Monarch, for we are sure that its reasoning and conclusion will commend itself to the judgment of this Court.

The decision in the case of the Monarch is ample to sustain the liability upon the United States to pay compensation for those services. As the Court said in that case: "The essence of the pleading is the petition to be awarded compensation for valuable and highly meritorious services rendered the Government in saving its property in maritime peril." That is exactly this case, except that the question here is whether the Government had such an interest in the property as to fairly make it liable to pay. The decisions in the English cases above referred to are abundant to show that this interest which the Government had in the property *by reason of its lien upon the property for the duties*, is abundant to sustain the claim.

SIXTH POINT.

It is claimed that even if the facts were as stated, yet the Secretary of the Treasury had the power to refuse the repayment of the duty, even though the facts were such as to make his refusal an arbitrary and wrongful act.

In other words, the proposition is that the Secretary of the Treasury had the power to do an unjust and unrighteous action, and that, because he had that power, it cannot be argued that he would be called upon to do the act which was right and just. That is certainly not a proposition which should commend itself to this Court.

On the contrary, as this Court said in the case of Gibbons v. The United States, 8 Wall 269: "The

supposition that the Government will not do justice is not to be indulged." Nor should the supposition that the Secretary of the Treasury would not do justice be indulged.

SEVENTH POINT.

The opinion of the Circuit Court of Appeals in this case is well considered. It supports its conclusion that the Secretary would, on the facts here admitted, be required to refund these duties by the authorities and decisions of this Court, to which we refer.

In the case of the Supervisors v. The United States, 4 Wall, 435, 446, this Court, in giving construction to a similar statute, used the following language:

"The conclusion to be deduced from the authorities is that where power is given to public officers in the language of the Act before us, or in equivalent language" (and it cannot be argued that the language of this statute is not equivalent language), "whenever the public interest or individual rights call for its exercise, the language used, though permissive in form is in fact peremptory. What they are empowered to do for a third person the law requires shall be done. The power is given not for their benefit, but for his. It is placed with the depository to meet the demands of right and to prevent a failure of justice."

The argument in this case for the petition is that the demands of right shall not be listened to, and that justice shall fail. But we submit that no such conclusion can be properly adopted by this Court.

EIGHTH POINT.

We submit that the opinion of the Circuit Court of Appeals in this case is well reasoned, is consonant to law and justice; that respondent's claim in this case is a claim only for fair compensation, and that the effort of the United States to resist that payment is an effort to save itself the payment of a sum due in fairness and justice, on the assumption that the Secretary of the Treasury would not have decided the case in accordance with the facts if it had been submitted to him.

NINTH POINT.

The proposition is well settled that the question of the construing of Acts containing such language as that of this Act is to be determined by the intent of the Legislature. The argument of the petitioner seems to be that when Congress said "the Secretary of the Treasury is authorized" to do what is manifestly a just and righteous act, it meant that the Secretary of the Treasury was authorized *not to do that very act*. We submit that no such intent can be charged upon Congress. As the Circuit Court of Appeals in its opinion says: "It seems quite apparent that the intent of the Legislature was to afford relief to unfortunate importers who might be able to satisfy the Secretary by sufficient proof that they came within the terms of the Section." And the making of the perpetual annual appropriation for such payments plainly shows that such was the intent. It could not have been the intent of Congress that the Secretary of the Treasury might have the power to *refuse the relief* to the unfortunate importers which the statute awards.

he question involved is not of any great im-
ance as to amount. The cases in which goods
destroyed under such circumstances as bring
n within the purview of the Statute, are few.
this case the only amount involved is Six
dred Dollars. But, aside from the question of
ount, the question whether the United States
ernment shall or shall not do the thing that
ight and fair, and whether it shall be assumed
not that the Secretary of the Treasury would re-
e to do a just act which he was authorized to
is a question of importance. That question
s been passed upon by the Circuit Court of Ap-
ls, and rightly decided.

TENTH POINT.

The prayer of the petition, therefore should be
used.

R. D. BENEDICT,

Advocate for Cornell Steamboat Company,
Respondent.

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Supreme Court of the United States

THE UNITED STATES,
Petitioner.

v.

THE CORNELL STEAMBOAT CO.

No. 239.

Brief and Points for the Cornell S. B. Co.

This case is brought by certiorari to review a decree of the U. S. Circuit Court of Appeals for the Second Circuit made on March 13, 1905, affirming a decree rendered by the District Court of the Southern District of New York against the United States in favor of the Steamboat Co. for the sum of $603.60.

The suit against the United States was brought under the Tucker Act.

The case was disposed of in the District Court on a demurrer to the petition.

FIRST POINT.

The claim of the Cornell Steamboat Co. which is resisted by the Government of the United States is founded on the principle laid down by the Supreme Court of the United States in the case of The Davis (10 Wallace R., p. 19) in these words:

"When the property of the Government has been saved from destruction by salvors *justice and*

sound policy require that it should be held to bear its share of the burden which the unanimous voice of maritime nations imposes upon all other property in like condition."

SECOND POINT.

The case came before the District Court of the United States for the Southern District of New York on a petition under the Tucker Act and a *demurrer* to that petition by the United States.

The facts stated in the petition are therefore admitted.

Those facts, thus admitted, are as follows:

That the barge Bangor, loaded with 1,883 bags of sugar, while in the waters of the port of New York, was in danger of being destroyed by fire.

That the petitioner's tug, at great risk and peril, saved the lighter and the sugar from destruction by said fire.

That the sugar was subject to duty and was still in the possession and under the control of Custom House officers of the United States.

That the owners of the lighter paid salvage.

That the petitioner filed a libel against the sugar in the District Court for the Eastern District of New York to recover salvage, and that in that case that Court made a decree, a copy of which is attached to the petition.

That by the services the sum of $6,000 in duties was saved to the United States.

The decree, which is also admitted, decided that the duties on the sugar, amounting to $6,000, had been paid to the Government of the United States and that "if the sugars had been burned the claimants (the owners of the sugar) would have been entitled to a rebate of said duties," and that the amount of the award to the libellants for the salvage services is fixed at ten per cent. of the value of the property saved.

And it awarded ten per cent. of the market value of the sugars, less the amount of the duties, $6,000.

And therefore the District Court awarded to the Cornell Steamboat Co. 10 per cent. of the $6,000 which had thus, as was admitted, been saved to the United States.

THIRD POINT.

It has been held by various courts that the United States Government is liable to pay salvage. In this the Government differs from an ordinary shipowner only in the form in which it must be sued, and in the fact that no attachment can be made of its vessel to which the service was rendered. But its liability to pay salvage—not compensation for work, labor and services, but *salvage*, with all that the word means—has been affirmed by the Supreme Court, by the Court of Claims, by the Circuit Courts of Appeal for the Fourth and Second Circuits, by the Circuit Court for the District of Connecticut, and by the District Court for the Northern District of California, and has never been denied by any court. It would seem, therefore, as though the matter were well settled.

The first case is *The Davis, 10 Wall., 15*, in which the Supreme Court says as follows:

> "Two questions are raised by the record in this case, both of which are important. The first is whether personal property of the United States on board a vessel for transportation from one port to another is subject to a lien for salvage services rendered in saving the property. * * * Of the first proposition there does not seem to be any reasonable doubt, upon a view of the authorities. * * * The proposition is treated by the modern text writers as settled. We are quite satisfied with the reasons on which the principle rests, and are of opinion that when the property of the Government has been saved from destruction by salvors, or by

> those sacrifices which are compensated by a contribution in general average, justice and sound policy require that it should be held to bear its share of the burden which the unanimous voice of maritime nations imposes on all other property in like condition."

The question of the liability of the Government to pay salvage, and the jurisdiction of the Court of Claims to hear salvage claims, was three times presented to the Court of Claims and decided in favor of the liability and the jurisdiction.

Gould v. *United States*, *1 Court of Claims*, *184*, was an action to recover salvage for services rendered to a Government lightship in distress, and a salvage award was made.

Bryan v. *United States*, *6 Court of Claims*, *128*, was an action brought to recover salvage for services rendered to a barge laden with military stores, the property of the Government. And while the Court dismissed the petition on the ground that no valuable services had been rendered, it reiterated its view that salvage is recoverable against the Government, and that the Court of Claims had jurisdiction to award salvage in a proper case.

In *McGowan* v. *United States*, *20 Court of Claims*, *147*, a claim for salvage for saving a Government tug in peril on the Missouri River, the Court declared that it "saw no reason for changing a conclusion which was reached fourteen years ago, and has remained unquestioned since," and awarded salvage for the service.

Three cases besides the present one have been decided under the Tucker Act to the same effect.

In *United States* v. *Morgan*, *99 Fed. Rep.*, *570*, the Circuit Court of Appeals for the Fourth Circuit sustained an award against the Government made by the Circuit Court for the Eastern District of Virginia for a salvage service rendered by a tug to a Government lightship adrift in Chesapeake Bay.

In *Hartford & N. Y. Trans. Co.* v. *United States, 138 Fed. Rep., 618*, the Circuit Court for the District of Connecticut awarded salvage for services rendered to a United States vessel on fire.

And in *Rees* v. *United States, 134 Fed. Rep., 146*, the District Court for the Northern District of California awarded salvage against the Government on account of the saving of certain property by the salvors from the wreck of the United States ship Yosemite.

We maintain that, in view of these decisions, the question of the liability of the United States to pay salvage in a proper case is not open to argument. The law which sustains such a claim is but a form of the general and ancient rule that "the United States, in relation to the proprietorship of real or personal property, have, in their public capacity, like authority and remedies, and are *subject to like liabilities in dealing with* it through legal agencies or otherwise as natural persons."

> *Eight Hundred and Fifty-eight Bales of Cotton, Blatchford's Prize Cases, 325.*

When the United States allows itself to be sued before the Court, it must stand before the Court like any other party before the Court, affected by the same considerations as any other party.

> "When the Government engages in the making and negotiation of commercial paper, it submits itself to the settled rules of commercial law, and in that respect stands before the Courts of law, whenever jurisdiction is properly obtained, to receive the application of those rules precisely as they would be applied to an individual."
>
> Cooke *v.* The U. S., 10 Blatch., p. 59.
> 858 Bales of Cotton, Bl. Pr. Cas., 325.

"The United States, when they contract with their citizens, are controlled by the same laws

that govern the citizen in that behalf. All obligations which would be implied against citizens under the same circumstances will be implied against them."

U. S. *v.* Bostwick, 94 U. S., 53, 66.

And the principle that in Court a man shall be held to have undertaken to do what he ought to do must be as applicable to the United States when it is sued, as to any citizen of the United States.

FOURTH POINT.

It was argued for the Government on the Brief in support of the petition for the certiorari that the District Court had no juridiction, "the suit being under a Revenue Law."

But the statement is an error. The suit is not "under a Revenue Law." It is a suit under the general Maritime law.

In the case of Ferry Co. *v.* The U. S. (85 F. R., 551), which seems to have been relied on to sustain the above statement, the suit was brought to reverse a decision which had been made by the Secretary of the Treasury and the Court held it had no power to reverse. We fail to see any similarity between that case and the present one.

FIFTH POINT.

It is claimed that the suit for salvage cannot lie here, because the United States did not request the service. That proof of a specific request is not necessary is held in all the cases above cited, for in none of them was there proof of any specific request by the United States. The "implied contract grow-

ing out of the successful event of the service" (99 F. R., 572) has always been held sufficient ground for the jurisdiction of the Court to award salvage.

The case of The Sabine (101 U. S., 384) is referred to. But that was a proceeding *in personam* against consignees of cargo who were not owners of it, and it was very properly held that the *consignees* of the property could not be held unless there was proof of a request by them. But the distinction between the personal liability of owners and of mere consignees is plainly pointed out.

SIXTH POINT.

But the claim is made on behalf of the Government that the construction of Section 2984 of the Revised Statutes is involved in this case, and that the Circuit Court of Appeals in its decision wrongly construed that section.

It is claimed that although the case comes up on demurrer which admits all the facts, and although if this sugar had been destroyed by this fire, its owners would have been entitled to claim a repayment of the $6,000 duties by the United States, yet that the Secretary of the Treasury might have refused to pay the duties back, even if all the facts which called for such payment had been proved to him, and that therefore the United States was in no danger of losing anything if the sugar had been burned, because, as the Statute says that the Secretary is "authorized" to pay, he had the power to refuse the repayment of the duty, even though the facts were such as to make his refusal an arbitrary and wrongful act.

In other words, the proposition is that the Secretary of the Treasury had the power to do an unjust and unrighteous action, and that, because he had that power, it cannot be argued that he would be

called upon to do the act which was right and just. That is certainly not a proposition which should commend itself to this Court.

On the contrary, as this Court said in the case of Gibbons *v.* The United States, 8 Wall., 269: "The supposition that the Government will not do justice is not to be indulged." Nor should the supposition that the Secretary of the Treasury would not do justice be indulged.

The decision of the Circuit Court of Appeals in this case that under this Statute the Secretary would, on the facts here admitted, *be required* to refund these duties is sustained by many authorities and decisions of this Court and other courts.

In the case of the Supervisors *v.* The United States, 4 Wall., 435, 446, this Court, in giving construction to a similar statute, used the following language:

> "The conclusion to be deduced from the authorities is that where power is given to public officers in the language of the Act before us, or in equivalent language" (and it cannot be argued that the language of this statute is not equivalent language), "whenever the public interest or individual rights call for its exercise, the language used, though permissive in form, is in fact peremptory. What they are empowered to do for a third person the law requires shall be done. The power is given not for their benefit, but for his. It is placed with the depository to meet the demands of right and to prevent a failure of justice."

In the case of The City of Galena *v.* Amy, 5 Wall., 708, where the word "may" was used in a statute, this Court said that under the circumstances the discretion given by it to the City Council could not "be resolved in the negative." "The power is in the nature of a trust for his benefit."

And again, in French *v.* Edwards, 13 Wall., 511, this Court said: "Where the requisitions prescribed are intended for the protection of the citizen and to prevent a sacrifice of his property, and

by a disregard of which his rights might be and generally would be injuriously affected, they are not directory but mandatory."

In the case of Ralston *v.* Crittenden, 13 Fed. Rep., 512, the Circuit Court of Missouri, McCrery, *J.*, said:

> "Even if the terms of the statute were permissive only, and meant no more than the words generally employed in the statutes empowering a grant of authority or power to a public officer to do a certain act, still it is well settled that such acts are to be construed as mandatory whenever the public interest or *individual rights* call for the exercise of the power conferred."

The above cases are referred to.

In the case of New Orleans National Bank *v.* Merchant, 18 Fed. Rep., 841, in which the question was under section 2999 of the Revised Statutes, which provides that the Postmaster-General "*may*, upon evidence satisfactory to him, &c., instruct postmasters," the Circuit Court held that that law

> "gave to the Postmaster-General no authority to suspend action. Upon evidence satisfactory to him *he must act*," and

the case of Supervisors *v.* U. S., 4 Wallace, 445, from which we have quoted above, is cited as a controlling authority.

In the case of The National Bank of the Republic *v.* The City of St. Joseph, 31 Fed. Rep., 216, where it had been provided by statute that the Mayor and Councilmen "may levy and collect a special annual tax," &c., the Circuit Court, Wallace, *J.*, says:

> "The proposition seems almost too plain to require discussion that it is the intention of section 3, evinced in plain and explicit language, to empower the Mayor and Councilmen to call in and pay off, whenever they may deem it proper to do so, the whole or any part of the bonded indebtedness of the city. The exercise of the power, though permissive merely in its terms, is a duty which these officers are bound

to fulfill." (Supervisors *v.* U. S., 4 Wall., 435.) "It is a power to be held and exercised for the benefit of the public from time to time, as occasion requires."

In the case of Provisional Municipality of Pensacola *v.* Lehman, 27 Fed. Rep., 324, 332, the Circuit Court of Appeals for the Fifth Circuit said:

> "The authorities are to the extent that when authority is given under a statute, whether by the word 'may' or other permissive words, for an act to be done by a public officer, and it concerns the public interest, or is *for the benefit of third persons*, it is mandatory. There seems to be no doubt that if the words, 'and it should appear equitable to said board that such conveyance should be made,' had been omitted from the first section of the statute, the statute would have been mandatory." Citing the same cases.
>
> "With those words in the statute it would seem, under the authority of Supervisors *v.* U. S., that unless there should be, in fact, equitable reasons against making such conveyance the statute would still be mandatory."

In the case of The City of Little Rock *v.* The U. S., 103 Fed. Rep., 324, the language of this Court in the case of Supervisors *v.* The U. S., 4 Wall., 435, is quoted as a conclusive answer to the contention made that the statute did not declare that the officers of the city *should* exercise the power to issue the warrants.

In the case of The Village of Kent *v.* The U. S., 113 Fed. Rep., 237, where the statute did not say that the village *should* levy the tax, the Circuit Court of Appeals, in the Sixth Circuit, said:

> "It is argued that this statute is merely an enabling one to permit the Council to levy as much for this purpose as they shall see fit. But it is well settled in statutory interpretation that the word 'may' may be read 'shall.'"

The Court then quotes the language in Rock Island Company Supervisors *v.* The United States, 4th Wall., which we have quoted above, and proceeds:

> "This language seems to us applicable to the statute under consideration. The power to levy this tax is given for the benefit of creditors, in this case, to meet a demand adjudicated to be right and proper after full trial. It imposes a duty upon the council, which, in our judgment, they are required to exercise as long as they are able to do so within the limit imposed by the law upon the amount of taxation for any given year. We therefore construe this section as though it read, 'The council shall levy a sum sufficient to pay the interest on the public debt to be applied for no other purpose.' We find nothing in the case cited by counsel for plaintiff in error (U. S. *v.* Thoman, 156 U. S., 358) that is in conflict with this view."

In the case of the People *v.* Supervisors of Otsego Co., 51 N. Y., 401, it appeared that a statute had been passed by which the Supervisors were "*authorized and empowered* upon the application of any party aggrieved," to hear and determine a claim for repayment of taxes paid on property exempt from taxation, "and to repay to the proper person the amount collected or paid." The relator had paid taxes on property exempt and applied to the Supervisors for repayment. They had refused to repay them and the Court of Appeals held that the words "authorized and empowered" were "mandatory and imperative," and affirmed a judgment directing the Supervisors to act and repay the amount. The opinion cites abundant authorities to sustain its position. Among others it quotes from Supervisors *v.* U. S., 4 Wallace, 435, the language which we have quoted above.

Says Judge Field in the Chinese Laborers' case, 13 F. R., 291, 294: "All laws should be so construed, if possible, as to avoid an unjust or an absurd conclusion.

"General terms should be so limited in their application as not to lead to injustice, oppression or an absurd consequence" (U. S. *v.* Kirby, 7 Wall., 482).

Any construction of the statute under consideration in the case at bar which would hold that the Secretary of the Treasury, although all the facts were proved without contradiction before him which the statute requires, might arbitrarily refuse to make the payment, simply because the word in the statute is "authorized," would certainly be an authorization of injustice. It is difficult to say whether such a refusal would be more unjust, or more oppressive, or more absurd.

SEVENTH POINT.

But it is claimed that even if the sugar was saved under such circumstances that the United States would have been required, if it had been destroyed by the fire, to repay the $6,000, that was not such an interest as that the United States ought to pay salvage for the saving of the sugar.

The contrary rule has been laid down by the English Admiralty Court.

In the case of The 5 Steel Barges, (15 P. D. Rep., 142), cited in U. S. *v.* Morgan, 99 F. R., 570, a party had built five barges for the government of England, to be paid for by installments, one of which remained due. Salvage services were rendered to the five barges. Two of them were thereafter delivered to the Government, before any lien for salvage was asserted against them. The salvors filed a libel against the three undelivered barges *in rem*, and *against the owners of the two that had been delivered.*

The Court said: "I think it is perfectly clear on the authorities that an action *in personam* lies

against the owners of a vessel which has been transferred to others, and the lien lost."

The Court then held that the property in these two barges was not in the defendants, but in the Government, and said: "But on this point I am of opinion that the right to sue *in personam* is not confined to the case of a defendant being the legal owner of the property saved. I think it exists in cases where the defendant has an interest in the property saved which interest has been saved by the fact that the property is brought into a position of security."

"The claim of salvage" said the Court further, "is a legal liability, arising out of the fact that property has been saved, that the owner of the property who has had the benefit of it, shall make the remuneration to those who have conferred the benefit, notwithstanding that he has not entered into any contract on the subject."

"I think that proposition equally applies to the man who has had a benefit arising out of the saving of the property."

"If defendants had not been in a position to deliver the barges within the twelve months" * * * they would have been "liable to make restitution of the installments which had been paid them on conditions not fulfilled by them. I think, therefore, that they had substantially an interest to the full amount of the barges at the time of the services."

And the Court gave a decree for the libellants.

This case of the Five Steel Barges was fully considered by the Admiralty Court and the High Court of Justice in England in the case of the Port Victor (Aspinall's Maritime Law Cases, vol. 9 pp. 163 and 182), and unhesitatingly sustained.

Justice Jeune in his decision says (p. 166): "The true view is, I think, that the law of Admiralty imposes on the owners of property saved an obligation to pay the person who saved it, simply because, in the *view of that system of law, it is just that he should* and *this conception of justice* naturally im-

poses a proportionate obligation upon *any person whose interest in the property is real* though falling short of that of ownership. I see no reason, therefore, why I should not follow the view of Lord Hannen and of the Scotch Court of Session, that *a man who has had a benefit arising out of the saving of the property* is liable to a claim for salvage no less than the owner of it."

The case being taken by appeal to the High Court of Justice was affirmed (p. 183). Lord Alverstone in his opinion said: "Speaking for myself I really feel almost bound by the authority of so great a lawyer on such a subject as Sir James Hannen, under circumstances practically identical with the circumstances of the present case. I should hesitate a very long time to overrule his decision in the case of the Five Steel Barges." And he quotes from the opinion in that case the language which we have quoted above.

Judge Smith agreeing with Lord Alverstone, said (p. 184): "We have, independently of each other, four Scotch Judges and afterwards Sir James Hannen, spontaneously arriving at the same conclusion. Now we are asked in the year 1901 to say that all of those five learned Judges were wrong in what they decided in those cases. I myself am prepared to rest my judgment upon the judgment of Sir James Hannen; and I will say this, that having read that judgment through twice, *I consider it is founded on common sense and I refuse to say it is wrong.*"

Now in 1906 this Court is asked to say that "all of those five learned Judges, supported as they have been by the high authority of Judge Jeune and of Lord Alverstone and his two associates and of the Circuit Court of Appeals in this case were "wrong in what they decided," and that no weight is to be given to the considerations of "justice" and "common sense," on which those decisions are founded.

The Court will hardly come to such a conclusion.

EIGHTH POINT.

The Circuit Court of Appeals held that as the Government had a lien on these sugars till the duties were paid, and (Record fol. 32) which would have been lost if the sugars were burned, the Government had such an interest in these sugars as made the rule laid down by the English Admiralty law applicable.

That the Government had such a lien is well settled (U. S. *v.* Boxes of Pipes, 2 Abbott's Reports, 500; U. S. *v.* George, 6 Blatchford Rep., 415).

And the Admiralty law being governed everywhere by the same principles and rules of equity and justice, and no reason of equity or justice existing why this interest should go free and the Cornell Steamboat Co. should not receive the same rate of compensation for saving all interests.

The decree of the Circuit Court of Appeals in this case should be affirmed.

BENEDICT & BENEDICT,
Proctors for Appellee.

R. D. BENEDICT,
Advocate.